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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Written Ex Parte Filing

Dear Ms. Dortch:

The Joint Board is presently considering four proposals by members of the Joint Board or the Joint Board staff for revision of the universal service support mechanisms. Each of the proposals recommends that the FCC delegate to state commissions all or part of the FCC's authority to allocate federal support among eligible telecommunications carriers.¹ *San Carlos Apache Telecommunications Utility, Inc* ("SCATUI") is a tribally owned telecommunications carrier providing service in a high cost area and not subject to the jurisdiction of a state commission.² SCATUI is concerned that such delegation would eliminate the universal service support without which it would be financially unable to continue provide service to all the residents of the San Carlos Apache Reservation.

The Commission has explicitly recognized the unique status of tribally owned telephone companies, as well as general principles of tribal sovereignty that foreclose state authority to regulate on-reservation

¹ Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support, Public Notice, CC Doc. No. 96-45, FCC 05J-1, Aug. 17, 2005 ("Joint Board Notice"). A similar proposal was recently published by a foundation supported by the Bell Companies, large manufacturers and some national associations. Progress & Freedom Foundation, News Release, Universal Service Reform Proposed, October 24, 2005, www.pff.org/news/news/2005/102405dacaufi.html. ("Performance-based block grants... would be administered by state authorities, which could devise their own distribution mechanisms with guidelines set by the FCC to allocate funds most efficiently.")

² *Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc. and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, DA 98-392, AAD/USB File No. 98-28 (Comm. Carr. Bur. 1998) para. 4 ("...[W]e conclude that the petitioners are not subject to the jurisdiction of a state commission for purposes of section 214(e)(6),...").

activities of tribal governments.³ In a Policy Statement adopted in 2000 the Commission committed to nine goals and principles, including

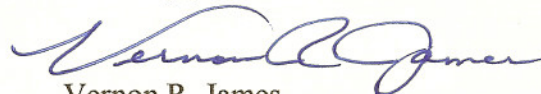
1. Work with Indian Tribes on a government-to-government basis
2. Consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.
3. Develop working relationships with Tribal governments and identify innovative mechanisms to facilitate Tribal consultation in telecommunications issues.
4. Remove undue burdens its decision place on Indian Tribes.

9. Incorporate these policy goals into its policy proposals.

SCATUI is concerned that the various proposals for granting state commissions authority to allocate universal service funds would have the effect of either excluding tribally owned companies from receiving sufficient and predictable support or would purport to make tribally owned companies subject to regulation by state commissions. Neither result is acceptable. Two of the proposals do suggest that the FCC could be a default administrator where the state commission did not make allocations.⁴ If the FCC were to establish separate programs for tribally owned companies it would have to ensure that the mechanism provided sufficient support which might be difficult to do if such support was divorced from the much larger nation-wide mechanism. Indeed, the USERP proposal recognizes that there would be higher contribution charges to customers where there is a "federal overlay."⁵

Should the Joint Board nevertheless recommend that the FCC adopt one of the four proposals or some other variation that delegates to states any level of authority to allocate or disburse universal service funds, then it should include in such recommendation a statement that for this purpose, Tribal Governments should be treated as states on those Tribal Lands served by tribally owned carriers.

Sincerely yours



Vernon R. James
CEO & General Manager

Cc: Joint Board Service List

³ Id., *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rule Making, CC Doc. No. 96-45, 14 FCC Rcd 21177, para. 38 (1999) ("We recognize that principles of Indian law, including the trust relationship between the federal government and Indian Tribes, tribal sovereignty, and tribal self-determination, must apply with equal force in the area of telecommunications.")

⁴ Joint Board Notice at 3, 25-26.

⁵ Id at 26.